

Californian Restaurants

ADA Compliance Audit (digital inclusion) Report

April 2022



AAAtraq™

 WILSON ELSER

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FOREWORD

The requirement for websites to comply with the Americans with Disabilities Act (ADA) is not going away. Organizations that ignore this are likely to face litigation, negative public opinion, and much higher costs than those that take immediate action. In the same way that we expect buildings to accommodate people living with disabilities, inclusivity for all is expected online.

Due to lucrative rewards and the ease of demonstrating non-compliance, litigation is growing exponentially across all sectors – one of the softer targets being restaurants and hospitality businesses, especially with the need to provide online ordering services, accelerated by the COVID-19 pandemic. Regulatory compliance has failed to keep pace, leading to risk exposure and vulnerability across the sector.

Compounding the problem is a false sense of security, felt by many who believe that they have matters in hand, spurred on by service providers that promise compliance but lack accountability.

There are solutions; AAAtraq provides the first service of its kind to make the assessment of risk easy to understand, i.e., non-technical reporting and monitoring, protecting you from litigation with insurance cover and providing a checklist for you to follow to mitigate risk.

The most important reason of all to tackle this issue head-on is to make the changes that continually improve and accommodate all users equally – to ensure compliance into the future.



Andrew Grant
Chair – Diversity and Inclusion Committee.

“The most important reason of all to tackle this issue head-on is to make the changes that continually improve and accommodate all users equally – to ensure compliance into the future.”



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8 out of 10
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USE OF DATA

The use of the findings of this report for litigious reason is not permitted – any claim made reliant on the data contain herewith should be considered invalid.





ADA

**We're OK thanks
or we're sorted...**

**This attitude is already wasting
over \$600,000,000/month.**



BACKGROUND

On July 26th, 2021, the United States celebrated the 31st anniversary of the Americans With Disabilities Act of 1990, also referred to as the ADA, (42 U.S.C. § 12101). When the ADA came into law, it established protections against discrimination in places of public accommodation for American citizens living with disabilities. While many facets of life for individuals living with disabilities in the United States are protected under the ADA, certain aspects have been left without proper protections from discrimination.

One such area is the internet. The first website didn't go live on the internet until August 6th, 1991(a full year after the signing of the ADA), making it impractical to assume that the drafters of this legislation would have considered including mandatory protections for inclusivity on the internet in their drafting of the articles describing the scope of the definition; places of public accommodation. No standard, then, could have been created to describe website accessibility and digital inclusivity.

Despite efforts and increasing spend on attempting to make websites inclusive, the reality is that almost 9 out of 10 of restaurant websites are non-compliant. This represents a challenge for organizations to find a more effective approach, the current one clearly isn't working, against a backdrop of the increasing threat of litigation.

The problem isn't going away, year on year we hear about the number of lawsuits increasing. The DOJ has also recently issued new guidance on web accessibility and its relationship with the ADA, indicating looking to enforce web accessibility anti-discriminatory legislation. As such, the time is now for organizations to take precautions to limit their exposure to litigation.

HOW CAN WE ACCESS OUR OWN RESULTS?

Page 19 of this report covers how to audit any website.

HOW DO WE REQUEST A PRIVATE AUDIT FOR OUR OWN WEBSITES?

For larger operators, with multiple websites, you can request a private audit, looking at risk across your full digital landscape. It includes websites that you manage the content for, and those that you have 3rd parties operating. The key to Risk Management is understanding your current risk position.

RESULTS

Organizations should note that the results cover the homepage of the website and as such, low risk doesn't indicate that the website overall is low risk.

To ensure risk is minimized the website should be audited in full; we suggest this should be at least once per quarter.

CONTACT

To discuss any of the above, in the first instance please contact:

Rob Andrews
VP Sales
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Litigation (continuous)

The law; *presently*, enforcement by individuals, through the Courts

- *“No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation.” 42 U.S.C. § 12182*
- *Requires “reasonable modifications”*
- *Modifications required should be “readily achievable” and not “fundamentally alter the nature of the good, service, facility, privilege, advantage,” or “result in an undue burden”*





**More than 8 out of 10
restaurants exposed.**



THE EXPOSURE

Continuous litigation

Unnecessary spend

Reputational damage



HELP IS AT HAND

Who can I talk to about this?

All too often, for far too many, the arrival of a demand notice is the first indication as to the importance of not discriminating online. Unfortunately, the clock is ticking by then and costs are starting to build.

The first call tends to be to the web services provider, who may say ‘nothing to do with us’ – what can you do?

1. Assess exposure yourself, you can do this in 60 seconds at www.AAAtraq.com (and it's free)
2. Check to see if your present law firm has specific expertise in this area.
3. Speak to your broker, understand if you have any ADA claims coverage.
4. **Understand what are the quick wins on your won site, for an independent view – try Will Bubenik?**
5. Collate documentation you have in relation to actions you have previously taken that can be used to *‘demonstrate reasonable adjustment’*
6. Sign up to AAAtraq – it doesn't cover you for this initial case, but you are at least covered for the future.



NEBULA MEDIA
GROUP

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Accessibility Specialist

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RESULTS

California restaurants are a soft target.

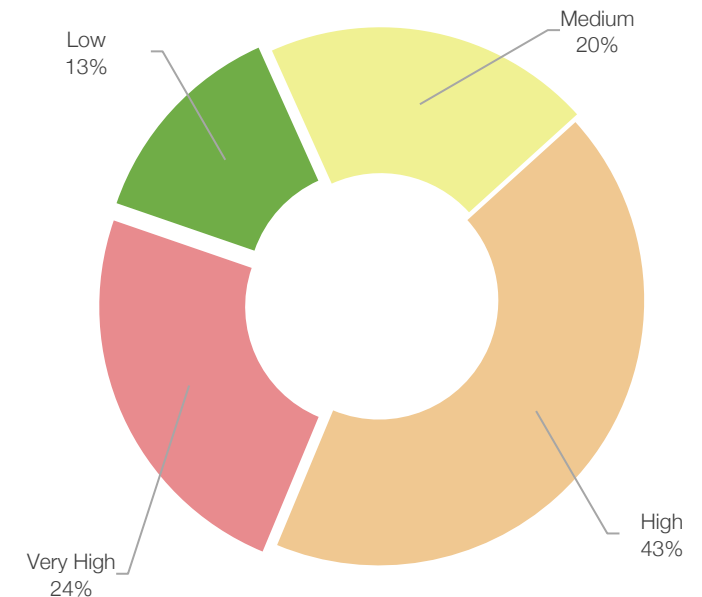
The results from the audit show that 87% of website homepages, failed to be inclusive and are at risk and exposed to litigation from opportunist lawyers.

The INDEX is made up of over 100 key California Restaurants and took no more than an hour to build. It really is very easy to identify vulnerabilities, which is why the opportunist lawyers are targeting the restaurant sector. There really is no defense either; with the prospect of a futile and expensive legal fight, most claims are settled.

Even those businesses that show as 'low-risk' can not afford to be complacent. The results are based on an audit of the website homepages. With a more in-depth audit, it's highly likely that failures could be identified on every website.

CALIFORNIA RESTAURANTS AUDIT

Summary of the findings, following audit across restaurants.



WEBSITE HOME PAGES

Plaintiff lawyers often focus on 3 ADA vulnerabilities ahead of issuing a demand. Across the various home pages, the % that had failings in these 3 key (some would call basic) areas:

ALT TEXT	71%	(alt text explained)
LINK TEXT	84%	(link text explained)
FORM LABELS	79%	(form labels explained)



JOIN US

Webinar

April 27, 2022 9:00 AM PST

Register Now

<https://web.calrest.org/events/CRALegal%20Center%20%20Marketplace%20Partner%20Webinar%20Get%20the%20ADA%20problem%20off%20your%20plate-5551/details>



It's not us

We are OK....the supplier has promised compliance.



Who's got your back when you are sued?
Confirm with those offering a *compliance promise*
- have they provided a financially backed indemnity?



EXAMPLE

Just looking at one supplier, there are numerous others.

The screenshot shows the Bentobox website with a navigation bar (Products, Solutions, Examples, Plans, Resources, Sign In, Get Started) and a main heading 'Restaurant Website Accessibility'. Below the heading is a sub-heading 'Get a digitally accessible restaurant website that follows ADA guidelines and supports your business.' and a 'Get A Demo' button. An 'Image Settings' dialog box is overlaid on a photo of a barista pouring milk into a latte, with fields for Name (Latte), URL (https://images.getbento.com), and Alt Text (barista pouring milk in latte). A testimonial below the photo reads 'Daily Provisions, Union Square Hospitality Group, Customer Since 2016'.

Website Access for All

Inclusive features. Accessible by screen readers and assistive technology.

Artificial Intelligence

We use artificial intelligence and best practices to follow the latest website requirements.

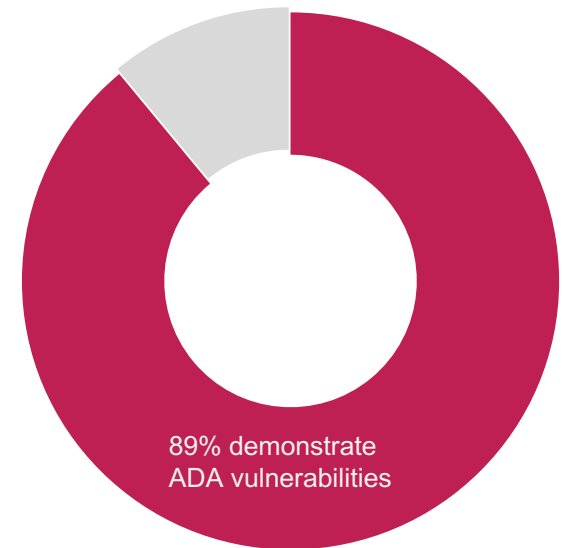
Website states

*ADA: Certified Accessible templates
In reading this and the mouse over, members would like to feel this is the reassurance they need to remain compliant with the ADA.*

The screenshot shows three pricing plans: 'Essentials' (A preset, mobile-optimized website + access to Bentobox's restaurant-specific tools), 'Plus' (A custom website designed for your brand + eCommerce tools to drive revenue), and 'Sell' (Set up online ordering and gift cards for your restaurant - no website required). Each plan has a 'Get Pricing' button. A callout box states: 'All of our templates are designed with accessibility in mind and have been certified to be compliant with the latest WCAG guidelines.' Below the plans, a list of features is shown, including 'ADA: Certified Accessible templates', 'Easy to update menus. No more PDFs!', 'Reservation & Delivery systems integration', '25+ expertly developed preset themes available', 'Add-on Feature: Sell and manage online orders from your website', 'Customized design, made specifically for your brand', 'Sell gift cards, event tickets & merchandise', 'Support for multi-location restaurants', 'Mobile-optimized design', 'Built in analytics & site metrics', 'ADA: Certified Accessible templates', and 'Easy to update menus. No more PDFs!'.

CLIENT RESULTS

The results of auditing their own reference (example) clients.



SERVICE PLATFORMS

Alternative platforms (see as in the space), their advertised reference clients will be reviewed in subsequent reports.

Craver	Squarespace	Resy	ignitecreates.com
OWI	WIX	HungerRush	minitable.net
LimeTray	Lunchbox.io	Odoo	vizergy.com

*Based on audits of their own client references websites, home page only. Audits carried out Dec. 2-6, 2021
<https://getbento.com/features/restaurant-website-ada-requirements/>



NO QUICK ANSWER

Accessibility widgets / overlays offer no guarantees.

There has been a significant rise in the number of lawsuits, especially where there is an accessibility overlay (the likes of accessiBe, UserWay, AudioEye – examples of companies that offer such a service).

Of late, their marketing seems to be telling the story that people want to hear – a quick fix to a complex problem, all for \$49/mnth, a fix that also includes protection (by way of warranty) if you are sued.

The promise to prevent ADA lawsuits by using an accessibility widget or overlays isn't real. Many lawsuits in 2021 list widgets and overlay features as a barrier to equal access in addition to other inaccessible aspects of the website. This means these approaches give plaintiffs more claims to add to a lawsuit, not less.

Over 400 companies that have an accessibility widget or overlay on their website have been sued.

It's perhaps worth reading these articles and considering - *are you really covered?*;

<https://adrianroselli.com/2020/06/accessibe-will-get-you-sued.html>
<https://adrianroselli.com/2021/09/userway-will-get-you-sued.html>
<https://overlayfalseclaims.com/index.html>
<https://www.forbes.com/sites/gusalexioiu/2021/06/26/largest-us-blind-advocacy-group-bans-web-accessibility-overlay-giant-accessibe/>
<https://ericwbailey.design/writing/accessibe-and-the-false-david-vs-goliath-narrative/>

Accessibility ””
overlays....
*‘despite the promises,
are there any examples
of websites that are
actually complaint?’*



Importance of contract clarity

The sector often rely on external vendors to supply content and platforms to promote and run their organization, including taking delivery/take-out orders and reservation requests. While the organizations may take steps to become compliant, their efforts may be undermined if vendors promising compliance are actually failing themselves. It is critical that vendors not only talk about compliance, but back this up with statement of facts in relation to compliance, backed up by financial indemnities. Contract clauses can protect from the failures of the vendor. For example*:



Bruno Katz
Attorney at Law

Wilson Elser Moskowitz Edelman & Dicker LLP
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Compliance with Americans with Disabilities Act (ADA). Contractor (vendor) agrees to comply with the ADA, including, but not limited to, including ADA-compliant accessibility of electronic media and web sites.

In addition, contractor agrees to comply with accessibility guidelines under Section 508 of the Workforce Rehabilitation Act of 1973. Contractor agrees that any material, Product, Work Product, access to material, Product, or Work Product, and any platforms on which material, Product or Work Product is delivered, displayed, used, or accessed, shall be accessible to persons with disabilities as defined and/or provided for in the Americans with Disabilities Act, 42 U.S. Code § 12101 et seq., under Section 508 of the Workforce Rehabilitation Act of 1973, as required by relevant state law, or as otherwise is required to meet industry standards so that individuals with disabilities are afforded equality of opportunity, full participation, independent living, and economic self-sufficiency, such that no individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation.

It is further understood that to the extent that Contractor provides *org name* with a service that allows for its staff to access appropriate material on a computer or mobile device, Contractor agrees that such material will be made available in a format that is accessible to all staff, regardless of any disability they may have. To the extent that content is uploaded to the platform provided by the Contractor, Contractor shall inform *org name* immediately and take whatever steps are necessary to make such content as accessible as possible.

Owner / operators cannot (claiming 'naivety') rely on the promises of vendors and should ensure initial audit and ongoing monitoring be performed to ensure accountability. To the extent that this reveals deficiencies, vendors can be notified to take the appropriate actions or have their contract voided, or where a failure results in litigation appropriate coverage be provided by vendors indemnity. Such surveillance should reduce the incidence of failures and ensure inclusivity.



DEMANDS ARE THE RISK

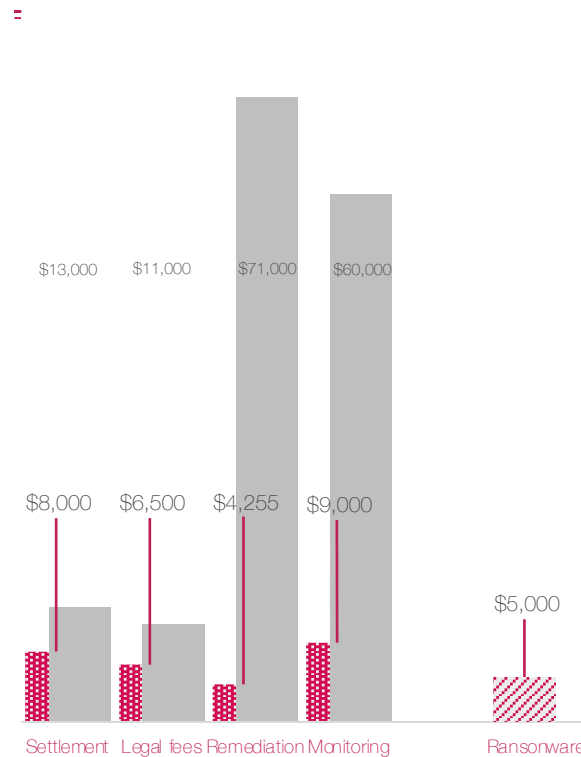
Legal landscape outlines very rich pickings – difficult to win against a compliance failure.

Lawsuits filed

Claims last 4 years / 57% increase



Cost of a demand [min] (exc. internal costs)



0.013%

Proportion of demands to claims (2019)

\$6.62bn

Estimated (external) costs to settle demands, excludes the cost of ongoing monitoring (2020)

64%

Increase in search term 'ADA Demand letter' (2021)

\$110,000

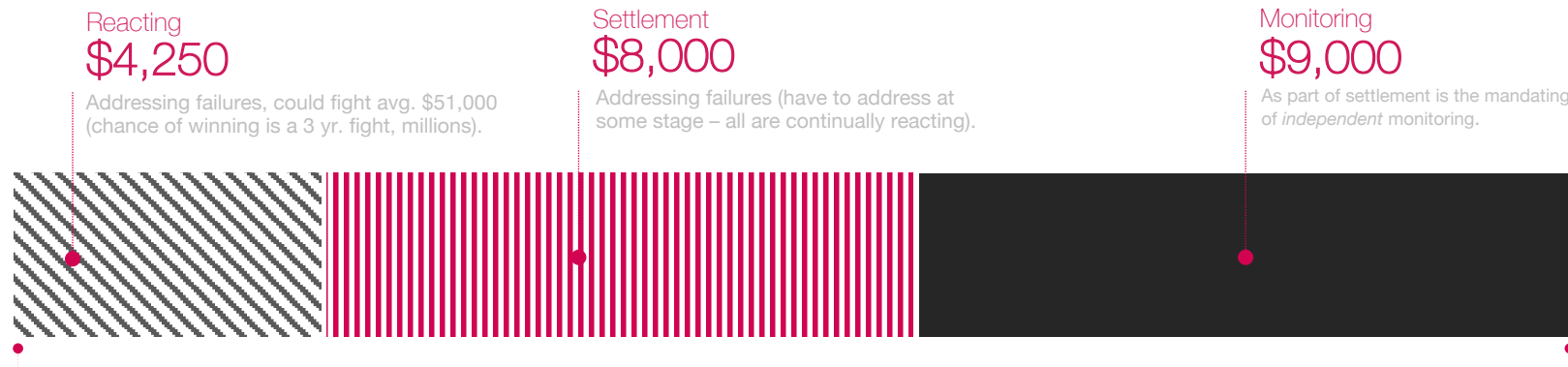
Typical expense of a repeated claim

10% of all ransom demands are over \$5,000.
<https://purplesec.us/resources/cyber-security-statistics/>
<https://www.boia.org/blog/did-u-s-businesses-spend-billions-on-legal-fees-for-inaccessible-websites-in-2020>



DEMAND IMPACT (MINIMUM)

What are the cost's of a demand?



Distraction 4.5+ months

Immediate impact

(finding support, managing and unknown process).

COSTS \$21,250





'paying up' is now costing

\$6.62bn

over \$600,000,000/month




Do it now

Assess the risk of any website
(it's free and takes 60 seconds)

@ www.AAAtraq.com





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Long Beach, CA 90807

- AAAtraq US / E
99 Wall Street #301,
New York NY 10005

- AAAtraq EU
27 Old Gloucester Street,
London. WC1N 3AX

Disclaimer

This document is offered for informational and illustrative purposes only and as an example of a review that was performed on the homepage of certain websites. The information is based on a review from a specific day and time and websites/webpages change often. As such, the report should not be viewed as authoritative or accurate as of the date of reading, and it should not be used as a single, sole authoritative guide. You should not consider any aspect of the service, or its provision, as legal services, advice or guidance.

In general, the services provided by AAAtraq are based on an assessment of the available areas of a website at a point in time. Sections, / areas of the site that are not open to public access or are not being served (possibly be due to site errors or downtime) will not be covered by our findings.

Where matters of legal compliance are concerned, you should always seek independent advice from appropriately qualified individuals or law firms.

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Accessibility

AAAtraq is committed to ensuring access to content for all, without discrimination of any kind. We engage in ongoing efforts to ensure adherence to the requirements defined by the World Wide Web Consortium (W3C), specifically, the Web Content Accessibility Guidelines (WCAG) 2.1.

Content contained within PDF documents can be provided in alternative formats to ensure access is available to as wide an audience as possible.

Although AAAtraq endeavours to meet the WCAG requirements, it is not always possible to do so in all areas of our websites, all documents formats at all times; be it our reliance on 3rd parties, technical or usability limitations.

If you experience problems, please let us know, at your convenience by email (accessibility@AAAtraq.com)

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Removing the risk

Start with clarity, AI to remove 95% human effort - intelligent compliance automation to remove risk.

